Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOSEPH A. VENTO,

Petitioner

v.

COLORADO NATIONAL BANK; C. JEAN STEWART; DAVID W. STARK; AND JACK M. MERRITTS,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a federal court may apply a "heightened pleading standard" – more stringent than the usual pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure – in a suit alleging liability under 42 U.S.C. §1983 against a state probate judge, a national bank and two private attorneys.

2. Whether a state probate judge assuming jurisdiction of an interpleader action in her probate court and ordering interpleader is absolutely immune from liability in an action brought against her in her individual capacity under 42 U.S.C. §1983.

3. Whether, under the facts of this case, those respondents who are private parties may be appropriately characterized as "state actors".

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceeding in the United States Court of Appeals for the Tenth Circuit.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Joseph A. Vento, the petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered on May 19, 1999.

OPINIONS BELOW

The opinion of the Court of Appeals whose order and judgment is herein sought to be reviewed was entered on May 19, 1999 in Case No. 98-1236, is unpublished, and is reprinted in the appendix to this Petition, pp. 20-24. The prior opinion of the United States District Court for the District of Colorado was entered on June 4, 1998, in Case No. 97-S-463, is unpublished and is reprinted in the appendix to this Petition, pp. 25-29.

STATEMENT OF JURISDICTION

The Order and Judgment of the United States Court of Appeals for the Tenth Circuit to be reviewed was entered on May 19, 1999.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

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STATEMENT OF THE CASE

This is a civil rights action brought by petitioner Joseph A. Vento, an attorney, in the United States District Court for the District of Colorado (Federal District Court), Civil Action No. 97-S-463, pursuant to 42 U.S.C. §1983 on March 7, 1997.

The Action

Petitioner's complaint in the Federal District Court (Appendix pp. 41-55) alleges in one count that the private respondents participated with the respondent C. Jean Stewart (Judge Stewart) in acts prohibited under §42 U.S.C. §1983 by initiating an interpleader proceeding in the Denver probate court resulting in respondent Judge Stewart issuing an Order on Interpleader Petition (Appendix pp. 30-32) causing petitioner to be deprived of his property without due process of law.

In another count in his complaint, petitioner alleges that the respondents conspired with one another to produce the same acts and results as set forth on the next preceding paragraph.

In the Federal District Court the only pleading that has been filed is the complaint by the petitioner. The respondents have filed motions to dismiss under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, and respondent Colorado National Bank also filed a motion for summary judgment alternatively with its motion to dismiss. Rule 12(b)(1) provides the pleader may assert by motion the defense of "lack of jurisdiction over the subject matter". Rule 12(b)(6) provides the pleader may assert by motion the defense of "failure to state a claim upon which relief can be granted".

On June 4, 1998, the Federal District Court ordered the complaint dismissed for the following reasons: (1) because respondent Judge Stewart did not act in the clear absence of all jurisdiction, she is entitled to absolute immunity from petitioner's claims; and (2) private lawyers do not act under color of state law simply by engaging in private litigation on behalf of their clients and the meager facts alleged in the complaint, even if true, do not state a claim that the private respondents engaged in a conspiracy with respondent Judge

Stewart to deprive the petitioner of his rights. (Appendix pp. 25-29)

The United States Court of Appeals for the Tenth Circuit (Court of Appeals) on May 19, 1999, affirmed the judgment of the Federal District Court dismissing the complaint.

The Court of Appeals made a finding that since the Denver probate court had jurisdiction over "every legal and equitable question arising out of or in connection with express trusts" (Colo. Rev. Stat. 13-9-103(5)), Judge Stewart had, therefore, at least colorable jurisdiction sufficient to invoke judicial immunity. The Court of Appeals made no finding as to how express trusts are involved in this case.

The Court of Appeals also set forth its criteria as to how the petitioner must state a claim for relief under 42 U.S.C. §1983. (Appendix pp. 23-24)

One of the issues before the Court of Appeals was that respondents acted to deprive the petitioner of his property without due process of law in the interpleader proceedings in the Denver probate court. The Court of Appeals addressed this matter by holding that petitioner's arguments demonstrated only a disagreement with the state court's decisions and therefore invoked the *Rooker-Feldman* doctrine. (Appendix p. 24)

The Facts

Judgments were entered on June 15, 1993, in favor of petitioner and his sister Cecilia DeFellippie, now deceased, against a subsidiary and predecessor of respondent Colorado National Bank in an action filed on September 3, 1987, in the Pueblo County district court, Case No. 87CV867. The judgments were appealed to the Colorado Court of Appeals where they were affirmed. Thereafter on December 11, 1995, the Colorado Supreme Court denied certiorari.

On December 29, 1995, the respondent Colorado National Bank filed a complaint for interpleader and injunctive relief in the Denver probate court, Case No. 95PR2379, interpleading the amounts of the judgments of June 15, 1993, referred to in the next above paragraph. (Appendix, pp. 56-61). The parties in the Denver probate court were: *Colorado National Bank, Plaintiff v. Joseph A. Vento, Linda Saunders, Personal Representative of the Estate of Cecilia DeFellippie, Irene C. Coulter, Richard G. Vento, Angelina Vento, Marihelen Vento and Wesley C. Kettelkamp, Jr., Defendants.* The Denver probate court only has one judge who at that time was, and still is, respondent Judge Stewart.

The respondent Colorado National Bank set a hearing for 10:30 a.m. on January 3, 1996, seeking an order for interpleader in the interpleader action. Notice to the petitioner of that hearing together with a summons and copy of the complaint in the interpleader action in the Denver probate court were served on petitioner at his home in Pueblo, Colorado, which is more than 100 miles from Denver, at 7:45 a.m. on January 3, 1996, the same day as the hearing.

The petitioner called his Denver attorneys and asked them to appear at that 10:30 a.m. hearing on January 3, 1996, on his behalf. Upon appearing for petitioner at that hearing, petitioner's attorneys requested a continuance which request was denied. After a non-evidentiary hearing that lasted for about one and one-half hours, respondent Judge Stewart entered an Order on Interpleader Petition (Appendix, pp. 30-32) which held, *inter alia,* that respondent Colorado National Bank shall be considered to have satisfied the judgment obtained against it in Case No. 87CV867 in the district court in Pueblo County, Colorado. At that time on January 3, 1996, when the respondent Judge Stewart ordered interpleader, the only pleading that had been filed was the complaint for interpleader and injunctive relief filed by the Colorado National Bank. No answers to the complaint nor defensive motions had been filed.

On January 5, 1996, The Colorado Court of Appeals in Case No. 93CA1375 issued its mandate ordering the judgment affirmed in case No. 87CV867 entered on June 15, 1993 in the Pueblo County district court.

After January 3, 1996, the respondent Colorado National Bank paid no interest on those judgments obtained against it on June 15, 1993, in the Pueblo County district court. Colorado Revised Statutes 5-12-106 provides that interest on an appealed judgment shall be payable until satisfaction of the judgment. (Appendix, pp. 34-35)

On March 7, 1997, the petitioner filed the present action in the United States District Court for the District of Colorado, Civil Action No. 97-S-463.

Basis for Federal Jurisdiction in the Court of First Instance

Jurisdiction of the United States District Court for the District of Colorado was invoked under the provisions of sections 1983 and 1988 of Title 42 of the United States Code.

REASONS FOR GRANTING WRIT

A Federal Court May Not Apply a "Heightened Pleading Standard" in a Civil Rights Claim Against a State Probate Judge and Private Parties

Certiorari should be granted to resolve conflicting decisions in the lower courts concerning the applicability of heightened pleading standards to §1983 actions. The judgment below is inconsistent with the rulings of other United States Courts of Appeal. In *Kimes v. Stone*, 84 F.3d 1121, 1129 (9th Cir. 1996) and *Housley v. United States*, 35 F.3d 400 (9th Cir. 1994), these courts have adopted the view that *Leatherman v. Tarrant County Etc.*, 507 U.S. 163, 113

S.Ct. 1160, 122 L.Ed.2d 517 (1993) ought to mark the absolute end of the "heightened pleading" requirement. In contrast, some circuit courts limit *Leatherman*, to municipal liability cases and have continued to apply heightened pleading requirements to §1983 complaints as the Court of Appeals did in this case.

All the Federal Rules of Civil Procedure under Rule 8(a) require is a "short and plain statement of the claim showing that the pleader is entitled to relief', giving the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80, 85 (1957*); Leatherman v. Tarrant County Etc.*, 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517, 524 (1993). In all respects the normal federal pleading standards apply to civil rights. *Bounds v. Smith*, 430 U.S. 817, 917 S.Ct. 1491, 52 L.Ed.2d 72 (1977).

In *Leatherman v. Tarrant County Etc.*, 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993) this Court cautioned that civil rights claims are to be subject only to normal standards of pleading. (T)he "heightened pleading standard" is just what it purports to be: a more demanding rule for pleading a complaint under §1983 than for pleading other kinds of claims for relief." This Court's decision in *Leatherman* thus employs a strict reading of Rule 8 (and 9) of the Federal Rules of Civil Procedure that suggests strongly that any heightened pleading standard is impossible to square with the Federal Rules of Civil Procedure and is therefore invalid and is not permissible.

The petitioner sets forth three counts in his complaint in the Federal District Court, each alleging a separate claim for relief. Count I alleges a claim for relief in which a private entity and private individuals engage, act jointly, and participate with the respondent state probate judge, C. Jean Stewart in the challenged action, causing injury to petitioner. (Appendix, pp. 41-52). Count II alleges a claim for relief for

conspiracy. (Appendix, pp. 52-53). And Count III seeks punitive or exemplary damages. (Appendix, p. 53).

Allegations in the complaint filed in the Federal District Court on March 7, 1997, which satisfy the requirements of Rule 8(a) of the Federal Rules of Civil Procedure are:

(1) That this is an action to redress the deprivation by the respondents of the rights of the petitioner secured by the Constitution and laws of the United States.

(2) The respondents were acting under color of state law during all times mentioned in the complaint.

(3) The actions of the respondents through the probate court violated the rights of the petitioner under the Fourteenth Amendment to the United States Constitution and Title 42 U.S.C. §1983.

(4) The respondents jointly engaged in acts prohibited under 42 U.S.C. §1983 and acted together producing a constitutional wrong depriving him of his property interest protected by the Constitution without due process of law.

(5) The respondents conspired with one another in getting and issuing an interpleader order which constituted a wrong to the petitioner by depriving him of his property without appropriate process.

To survive a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure – failure to state a claim upon which relief can be granted – the petitioner need only allege that he has a cause of action under 42 U.S.C. §1983 because the respondents, acting under color of law, deprived him of property secured by the Constitution and laws of the United States. In reviewing a decision granting a motion to dismiss, the factual allegations of the complaint must be accepted as true. *Leatherman v. Tarrant County Etc.*, 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517, 522 (1993).

In *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961) this Court ruled that allegations of facts constituting a deprivation under color of state authority of a

right guaranteed by the Fourteenth Amendment satisfy to that extent the requirements of the civil rights statute embodied in 42 U.S.C. §1983.

Petitioner's complaint in the Federal District Court adequately pleads facts to state a claim for relief. The allegations in the complaint satisfy the provisions of Rule 8(a)(2) of the Federal Rules of Civil Procedure, which only requires "a short and plain statement of the claim showing that the pleader is entitled to relief..."

The Federal District Court below ordered the complaint dismissed for the following reasons which, if followed and are required, would heighten the pleading standards under the Federal Rules of Civil Procedure.

> (Petitioner) continues to merely assert conclusory allegations that Judge Stewart lacked jurisdiction. (Petitioner) fails to understand that the interpleader action was brought in the Denver Probate Court because the money owed as a result of the Pueblo District Court judgment belonged to an express trust. Because Defendant Stewart did not act in the clear absence of all jurisdiction, she is entitled to absolute immunity from (Petitioner's) claims...private lawyers do not act under color of state law simply by engaging in private litigation on behalf of their clients...the meager facts alleged in the complaint, even if true, do not state a claim that these private parties engaged in a conspiracy with Defendant Stewart to deprive Petitioner of his rights. (Appendix p. 27)

The Court of Appeals affirmed the judgment of the Federal District Court dismissing the complaint.

The Court of Appeals set forth its criteria as to how the petitioners must state a claim for relief under 42 U.S.C. §1983 as follows: 1) Petitioner must show that the respondents acted under color of law; 2) conclusory allegations of

conspiracy are insufficient; and 3) petitioner must demonstrate a conspiracy between the private respondents and a state actor. The Court of Appeals, using a heightened pleading standard, found that Petitioner did not meet these criteria and, therefore, did not state a claim under §1983. (Appendix pp 23-24)

By virtue of the foregoing holdings, the Court of Appeals applied a "heightened pleading standard" – more stringent than the usual pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure.

The Respondent State Probate Court Judge, C. Jean Stewart, is Not Absolutely Immune From Liability.

The Court of Appeals made a finding that the Denver probate court had "at least colorable" jurisdiction over the interpleader action because under Colo. Rev. Stat. 13-9-103(5), jurisdiction is granted to the Denver probate court over "every legal and equitable question arising out of or in connection with express trusts" and is sufficient to invoke judicial immunity. In so holding , neither the Federal District Court nor the Court of Appeals made any finding as to how express trusts are involved in the case. (Appendix pp. 22-23, 27)

In general, the doctrine of judicial immunity may be invoked with respect to suits for damages against a judicial officer. *Mireles v. Waco*, 502 U.S. 9, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991). An exception exists to the general rule of judicial immunity from liability for damages with respect to actions taken which are not taken within a judge's judicial jurisdiction. A judge's immunity is dependent on the challenged conduct being an official act within his statutory jurisdiction, broadly construed. *Dennis v. Sparks*, 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980). In *Stump v. Sparkman*, 435 U.S. 349, 356, 98 S.Ct. 1099, 55 L.Ed.2d 331, 339 (1978), this Court held that,

> "...the necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him, and he will be subject to liability only when he has acted in the clear absence of all jurisdiction."

The Court stated in *Randall v. Brigham*, 74 U.S. 523, 19 L.Ed. 285 (1869) that judges of limited authority were protected only when they acted within their jurisdiction. To the same effect is *Bradley v. Fisher*, 80 U.S. 335, 20 L.Ed. 646 (1872) as follows,

> "Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known, no excuse is permissible."

The Denver probate court did not have jurisdiction over the interpleader suit filed in that court and respondent Judge Stewart acted without subject matter jurisdiction when she granted the Order on Interpleader Petition on January 3, 1996 (Appendix, pp. 30-32). Sections 13-9-101 through 13-9-103 of the Colorado Revised Statutes 1997 (Appendix, pp. 35-39), and section 9(3) of Article VI of the Colorado Constitution (Appendix, p. 33) show that the Denver probate court is a court of limited jurisdiction with subject matter jurisdiction to determine legal and equitable questions in connection with estates, probate matters, and wills and trusts only. Chief Justice Rehnquist dissenting in *Tulsa Professional Collection Services v. Pope*, 485 U.S. 490, 108 S.Ct. 1340, 1348, 99 L.Ed.2d 565 (1988) wrote,

> "...Probate proceedings have been traditionally uncontested and administrative, designed to transfer assets from someone who has died to his successor ... Occasionally there may be a disputed claim against the estate which is

then in most jurisdictions like any other civil suit."

The U.S. District Court found that respondent Judge Stewart did not act in the absence of all jurisdiction for the reason that

> "Plaintiff (petitioner) fails to understand that the interpleader action was brought in the Denver probated court because the money owed as a result of the Pueblo District Court judgment belonged to an express trust" (Appendix, p. 27).

This finding is factually incorrect because the money owed as a result of the Pueblo County district court judgment belonged to petitioner and his sister as individuals and not to an express trust. The United States Court of Appeals for the Tenth Circuit (Court of Appeals) recognized this in its Order and Judgment dated May 19, 1999 as follows, "In 1993, plaintiff (petitioner) and his sister obtained a judgment against CNB (Colorado National Bank) in the District Court in Pueblo County, Colorado." (Appendix, p. 21) The respondent Colorado National Bank recognized this in paragraphs 1 and 14 of its Compliant for Interpleader and Injunctive Relief in the Denver probate court (Appendix pp. 56-61). Paragraphs 2 through 6 of that complaint are superfluous and irrelevant in that being a beneficiary of trust has nothing to do with this case, nor does the fact that CNB (Colorado National Bank) is a party in a another action involving a trust have anything to do with this case.

The Court of Appeals determined that it did not have to act on the issue raised in that court that the Denver probate judge did not have jurisdiction over the interpleader action hearing on January 3, 1996. Instead, the Court of Appeals made a finding that the Denver probate court had jurisdiction over the interpleader action because under Colo. Rev. Stat. §13-9-103(5) jurisdiction is granted to the Denver probate court over "every legal and equitable question arising out of or in connection with express trusts," so Judge Stewart had at

least colorable jurisdiction sufficient to invoke judicial immunity. (Appendix, pp. 22-23). The Court of Appeals made no finding as to how express trusts are involved. However, the Court of Appeals made an erroneous finding that the competing claims on the judgment in the interpleader action included claims by trusts owned by the other members of plaintiff's family. (Appendix p. 21)

Furthermore, there is no jurisdiction under the Colorado Rules of Civil Procedure for interpleader actions in the Denver probate court. Rule 22(2) of the Colorado Rules of Civil Procedure (Appendix, p. 40) provides in part, "In any civil action of interpleader,...(s)uch district court shall hear and determine the case ..." No subject matter jurisdiction is given to the Denver probate court under that Rule 22.

On January 3, 1996, the Denver probate court and respondent Judge Stewart also lacked jurisdiction because jurisdiction over the matters involved in Case No. 95PR2379 begun on December 29, 1995, in the Denver probate court still rested in the Colorado Court of Appeals or the Pueblo County district court. The Colorado Court of Appeals in Case No. 93CA1375 issued its mandate on January 5, 1996, ordering the judgment affirmed in Case No. 87CV867 in the Pueblo County district court, and thus the Colorado Court of Appeals relinquished its appellate jurisdiction on January 5, 1996, seven days after the date of the commencement of the interpleader action in the Denver probate court on December 29, 1995.

Probate courts are courts of limited jurisdiction and have only that jurisdiction which is expressly given by statute, and neither the probate judge nor the probate court can have any greater authority than conferred by statute.

The Private Parties Acted Under Color of State Law and Were, Therefore, State Actors.

The Court of Appeals in its Order and Judgment (Appendix pp. 20-24) states that the petitioner brought suit against respondents on a conspiracy theory, which is set forth in Count II of the complaint. This statement overlooks the fact that in Count I of the complaint the petitioner sets forth alternatively and separately that the private respondents jointly engaged with, participated in and acted together with respondent Judge Stewart in depriving petitioner of his property without due process of law. Rule 8(e)(2) of the Federal Rules of Civil Procedure (Appendix p. 39) provides that a party may set forth two or more statements of a claim alternatively either in one count or in separate counts. Rule 8(e)(2) also provides that when two or more statements are made in the alternative and one of them if made independently would be sufficient the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. Both the Federal District Court and the Court of Appeals ruled only on the conspiracy count, stating nothing about the sufficiency or insufficiency of the other claim set forth in Count I of the complaint.

The Court of Appeals held that to state a claim under §1983 petitioner must show that respondents acted under color of state law. To the contrary, all that Rule 8(a) of the Federal Rules of Civil Procedure requires is for petitioners to allege that respondents acted under color of state law in order to state a claim under 42 U.S.C. §1983.

Private individuals in a proper case can be held liable under §1983. "Private persons, jointly engaged with state officials in the challenged action, are acting 'under color' of law for purposes of §1983 actions." *Dennis v. Sparks*, 499 U.S. 24, 27-28, 101 S.Ct. 183, 186, 66 L.Ed.2d 185, 189 (1980); *United States v. Price*, 380 U.S. 784, 794, 86 S.Ct. 1152, 16 L.Ed.2d 267 (1966). In *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982), a

private party's invocation of state prejudgment attachment by a public official of a debtor's property constitutes joint action subjecting the private party to a §1983 suit, and the constitutional requirements of due process apply to such procedures.

Involved in this case are the private parties putting the property of petitioner into the custody of the law through an interpleader proceeding to be acted upon by the respondent Judge Stewart and taking it away from and removing it from the reach of the petitioner. "When private parties make use of state procedures with the overt, significant assistance of state officials, state action may be found." *Tulsa Professional Collection Services v. Pope*, 485 U.S. 478, 486, 108 S.Ct. 1340, 1345, 99 L.Ed.2d 565 (1988). In this case, the interpleader action effectively operated as a prejudgment attachment by taking the property of petitioner (the judgment, or the amount thereof) into the custody of the court to be held for purposes of satisfying unlitigated claims against petitioner.

The requisite state action or color of state law is based upon private persons acting together with and being jointly engaged with state officials in the challenged action. The conduct allegedly causing the deprivation of a federal right has to be fairly attributable to the State. The deprivation must be caused by the exercise of some right or privilege created by the State – Rule 22 (interpleader) of the Colorado Rules of Civil Procedure – or by a person for whom the State is responsible – the respondent probate court judge, C. Jean Stewart. Secondly, the party charged with the deprivation must be a person who may fairly be said to be a state actor – in this case the respondent probate court judge, C. Jean Stewart – or because he has acted together with state officials. Here, the three private respondents acted together with the respondent probate judge, C. Jean Stewart – a person for whom the State is responsible - in the challenged action, the interpleader order, and under a right or privilege created by the State – Rule 22 of the Colorado Rules of Civil

Procedure. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982).

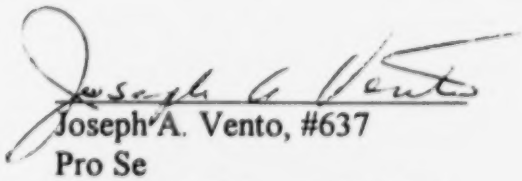
With respect to conspiracy, when two or more persons conspire to violate the civil rights of an individual, acting under of state law, if one or more of the conspirators is a state officer, then the mere fact that certain of the other conspirators are not state officers constitutes no defense to any of them under the Civil Rights statutes. *Hoffman v. Holden*, 268 F.2d 280, 299 (9th Cir. 1959) In the case at hand, the state officer is the respondent Judge Stewart.

Petitioner's complaint (Appendix pp. 41-55) describes the challenged procedures used by the respondents in obtaining the Order on Interpleader Petition on January 3, 1996, in the interpleader action in the Denver probate court showing the sequence of events depriving him of his property without due process of law.

CONCLUSION

For the foregoing reasons, the petitioner respectfully prays that his petition for a writ of certiorari be granted.

Dated: August 10, 1999 Respectfully submitted,



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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JOSEPH A. VENTO,

Plaintiff-Appellant,

v.

COLORADO NATIONAL BANK; C. JEAN STEWART; DAVID W. STARK; JACK M. MERRITTS,

Defendants-Appellees.

No. 98-1236
(D.C. No. 97-S-463)
(D. Colo.)

ORDER AND JUDGMENT*

Before BRORBY, EBEL, and BRISCOE, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiff Joseph A. Vento appeals from the district court's order adopting the magistrate judge's recommendation to dismiss his complaint brought pursuant to 42 U.S.C. §§ 1983 & 1988.[1] We exercise jurisdiction under 28 U.S.C. § 1291 and affirm.

Plaintiff brought suit in federal court against defendants, Colorado National Bank (CNB), Stark and Merritts, alleging that they conspired with defendant Stewart, a Denver Probate Court judge, to file a vexatious interpleader action in the Denver Probate Court. In 1993, plaintiff and his sister obtained a judgment against CNB in the District Court in Pueblo County, Colorado. The Colorado Court of Appeals affirmed the judgment on appeal. See Vento v. Colorado Nat'l Bank-Pueblo, 907 P.2d 642 (Colo. Ct. App. 1995). On December 11, 1995, the Colorado Supreme Court denied certiorari. On December 29, 1995, CNB filed the interpleader action seeking to interplead the amount of the Pueblo District Court judgment because of competing claims on the judgment, including claims by trusts owned by other members of plaintiff's family. Plaintiff claims the interpleader action was filed to prevent him from collecting the Pueblo District Court judgment. Defendant Stewart, acting in her capacity as a Denver Probate Court judge, entered an order on January 3, 1996, granting CNB's request to interplead the funds and enjoining all claimants, including Joseph Vento, from taking any action to collect the Pueblo District Court judgment.

Plaintiff then filed this lawsuit alleging his federal civil rights were violated by CNB, defendant Stark (the attorney who represented CNB in the interpleader action), defendant Merritts (the attorney who represented other claimants on the

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1. By order dated September 29, 1998, the appeal from the district court's award of sanctions and attorney fees was dismissed.

Pueblo District Court judgment), and defendant Stewart (the Denver Probate Court judge assigned to the interpleader action).

We review de novo an order dismissing a complaint for failure to state a claim for relief under Rule 12(b)(6) of the Federal Rules of Civil Procedure, using the same standard applied by the district court. See Ordinance 59 Ass'n v. United States Dept of Interior Secretary, 163 F.3d 1150, 1152 (10th Cir. 1998). "We accept as true all well-pleaded facts, as distinguished from conclusory allegations, and view those facts in the light most favorable to the nonmoving party." Maher v. Durango Metals, Inc., 144 F.3d 1302, 1304 (10th Cir. 1998). Dismissal of a complaint pursuant to Rule 12(b)(6) will be upheld only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957) (footnote omitted).

Plaintiff's claims against Judge Stewart, a state court judge, raise the issue of judicial immunity. "[A] state judge is absolutely immune from §1983 liability except when the judge acts 'in the clear absence of all jurisdiction.'" Hunt v. Bennett, 17 F.3d 1263, 1266 (10th Cir. 1994) (quoting Stump v. Sparkman, 435 U.S. 349, 356-57 (1978)). Plaintiff maintains that the Denver Probate Court had no jurisdiction over the interpleader action, relying on Rule 22 of the Colorado Rules of Civil Procedure and other rules. "[T]he scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." Stump, 435 U.S. at 356. Neither a judge's "commission of grave procedural errors," id., at 359, nor her action "in excess of [her] authority," id. at 356, will deprive the judge of immunity. A judge acts in the clear absence of all jurisdiction when she "acts clearly without any colorable claim of jurisdiction." Snell v. Tunnell, 920 F.2d 673, 686 (10th Cir. 1990). We need not decide whether the Denver Probate Court had jurisdiction over the interpleader action because we

find that under Colo. Rev. Stat. § 13-9-103(5), granting jurisdiction to the Denver Probate Court over "every legal and equitable question arising out of or in connection with express trusts," Judge Stewart had at least colorable jurisdiction sufficient to invoke judicial immunity. Therefore, Judge Stewart cannot be held liable under §1983.

To state a claim under §1983 plaintiff must show that defendants acted under color of state law. See Haines v. Fisher, 82 F.3d 1503, 1508 (10th Cir. 1996).

Plaintiff recognizes that CNB, Stark and Merritts are private parties, not public actors subject to liability under §1983, but he alleges that they acted under color of state law by engaging in joint activity and/or a conspiracy with Judge Stewart who is a state actor, to violate his rights. "[T]he immunity of a state official will not necessarily protect a private individual alleged to have conspired with [her]." Shaffer v. Cook, 634 F.2d 1259, 1260 (10th Cir. 1980). The test is whether "the plaintiff [has] demonstrated the existence of a significant nexus or entanglement between the absolutely immune State official and the private part[ies] in relation to the steps taken by each to fulfill the objects of their conspiracy[.]" Norton v. Liddel, 620 F.2d 1375, 1380 (10th Cir. 1980).

Plaintiff alleges that the following circumstances demonstrate that the private party defendants and Judge Stewart conspired to violate his rights: plaintiff was not granted a continuance of the January 3, 1996 hearing, he was not given sufficient time to respond to the complaint, and Judge Stewart made statements and rulings with which he disagreed. We hold that these "[c]onclusory allegations of conspiracy are insufficient to state a valid §1983 claim," Hunt, 17 F.3d at 1266 (quotation omitted), and that they do not "allege the kind of conspiratorial nexus" to support a "conspiracy intended to deprive [plaintiff] of his constitutional rights." Shaffer, 634 F.2d at 1261. Because plaintiff has failed to demonstrate a conspiracy between the private party

defendants and a state actor, their conduct is not covered by §1983.

Plaintiff's final argument is framed as a claim that he was deprived of his property through state action without due process of law. Even if plaintiff was deprived of his property, see Vento v. Colorado Nat'l Bank, No. 97CA1814, 1999 WL 46924 (Colo. Ct. App. Feb. 4, 1999) (noting that Denver Probate Court held that plaintiff was entitled to receive approximately $2.9 million from the interpled funds), his arguments to this court demonstrate only a disagreement with the stale court's decisions. Therefore, we invoke the Rooker-Feldman doctrine, which prohibits federal district courts from hearing federal claims whose only purpose is to obtain review of state court judgments when review should be achieved through appellate review in the state court system. See Kiowa Indian Tribe v. Hoover, 150 F.3d 1163, 1165 (10th Cir. 1998).

The judgment of the district court is AFFIRMED. The mandate shall issue forthwith.

Entered for the Court

/s/
Mary Beck Briscoe
Circuit Judge

(Filed May 19, 1999)

APPENDIX B-1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Daniel B. Sparr

Civil Action No. 97-S-463

JOSEPH A. VENTO,
Plaintiff,

V.

COLORADO NATIONAL BANK; C. JEAN STEWART; DAVID W. STARK; and JACK M. MERRITTS,
Defendants.

ORDER

THIS MATTER comes before the court on the Recommendation of United States Magistrate Judge that:

(1) Defendant Jack M. Merritts' Motion to Dismiss (filed April 1, 1997) be granted;
(2) Defendants Colorado National Bank's and David W. Stark's Motion to Dismiss or, In the Alternative, for Summary Judgment (filed April 22, 1997) be granted;
(3) Defendant C. Jean Stewart's Motion to Dismiss (filed June 17, 1997) be granted;
(4) This civil action be dismissed with prejudice;
(5) Defendants Colorado National Bank's and David W. Stark's Motion for Sanctions under Fed.
R. Civ. P. 11 (filed April 29 1997) be granted;

(6) Defendant Jack M. Merritts' request for costs, including reasonable attorney fees (made April 1, 1997), be granted;
(7) Defendant Stewart's request for costs and attorney fees (made June 17, 1997) be denied;
(8) Defendants Colorado National Bank's and David W. Stark's Motion for Injunction Prohibiting Joseph Vento from Filing Additional Complaints Against David W. Stark, Colorado National Bank, or Any of Their Agents or Attorneys Without Leave of Court (filed April 22, 1997) be denied;
(9) Defendant C. Jean Stewart's Motion to Stay Discovery (filed June 17, 1997) be deemed moot; and
(10) Plaintiff Vento's request for attorney fees for responding to the Motion for Injunction (made May 21, 1997) be denied.

The Recommendation was issued on April 28, 1998 and served by mail on April 28, 1998. On May 7, 1998, Plaintiff filed his Objection to the Recommendation. On May 15, 1998, Defendant C. Jean Stewart filed her Response to Plaintiffs Objections. On May 18, 1998, Defendants Colorado National Bank and David W. Stark filed their Response to Plaintiff's Objections. The court must make a *de novo* determination of those portions of the proposed findings or recommendations to which specific objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The court has reviewed, *inter alia*, the motions, Plaintiff's responses (filed April 21, 1997, May 12, 1997, May 21, 1997, and July 7, 1997), Defendants Colorado National Bank's and Stark's reply (filed May 30, 1997) and supplement (filed July 3, 1997), the complaint, and the applicable law and is fully advised in the premises. Upon *de novo* review of the proposed findings and recommendations, the court agrees with the Recommendation in its entirety.

First, as to the recommended dismissal of all claims against Defendant Stewart, "a state judge is absolutely immune from §1983 liability except when the judge acts 'in the clear absence of all jurisdiction.'" *Hunt v. Bennett*, 17 F.3d 1263, 1266 (10th Cir. 1994) (quoting *Stump v Spark-*

man, 435 U.S. 349. 356-57 (1978)). Plaintiff continues to merely assert conclusory allegations that Judge Stewart lacked jurisdiction. Plaintiff fails to understand that the interpleader action was brought in the Denver Probate Court because the money owed as a result of the Pueblo District Court judgment belonged to an express trust. Because Defendant Stewart did not act in the clear absence of all jurisdiction, she is entitled to absolute immunity from Plaintiff's claims based on her rulings and orders In the interpleader action before the Denver Probate Court. Plaintiff's complaint must be dismissed as to Defendant Stewart.

Next, Plaintiff continues to assert that private party Defendants Colorado National Bank, Stark, and Merritts acted under color of state law for purposes of §1983. Paragraph 23 of the complaint alleges that the Defendants conspired by the mere filing of the interpleader action in the Denver Probate Court and Judge Stewart's January 3, 1996 Order on Interpleader Action. Plaintiff then quotes from the transcript of the January 3, 1996 hearing at paragraph 25 of the complaint. However, "private lawyers do not act under color of state law simply by engaging in private litigation on behalf of their clients." Recommendation at p. 6 (citation omitted). The court agrees with the Recommendation that the meager facts alleged in the complaint, even if true, do not state a claim that these private parties engaged in a conspiracy with Defendant Stewart to deprive Plaintiff of his rights. Plaintiff's complaint must be dismissed as to Defendants Colorado National Batik, Stark, and Merritts.

Next, Plaintiff objects to the Magistrate Judge's statement of the facts. Upon review, the court is satisfied that the Magistrate Judge did not materially misstate Plaintiff's factual allegations and that the Magistrate Judge applied the appropriate standard of review for a motion to dismiss. Based on the factual allegations in the complaint, the Magistrate

Judge properly concluded that Plaintiff has not stated any legal claim for relief.

Finally, Plaintiff objects to the Recommendation that Defendants Colorado National Bank and Stark be awarded attorney fees and expenses under Fed. R. Civ. P. 11 and that Defendant Merritts be awarded costs, including reasonable attorney fees, pursuant to 42 U.S.C. § 1988. Plaintiff asserts that "the complaint and briefing in this case shows [sic] that it was not brought without a great deal of research and thought." To the contrary, research and/or thought by Plaintiff, a licensed attorney, would have revealed that:

> [t]he uniform case law in this Circuit and throughout the United States is that private attorneys and litigants in a civil suit do not act under color of state law. Furthermore, it has been settled law for decades that a claim of conspiracy between a state actor and private parties must be premised on evidence of an agreement and concert of action.

Recommendation at p. 8. This complaint appears to be nothing more than an attempt to relitigate issues already litigated in the state courts. This lawsuit meets the standards of meritless, frivolous, and vexatious litigation under Fed. R. Civ. P. 11 and 42 U.S.C. § 1988.

The court now being sufficiently advised, IT IS ORDERED:

Defendant Jack M. Merritts' Motion to Dismiss (filed April 1, 1997) Is GRANTED.

2. Defendants Colorado National Bank's and David W. Stark's Motion to Dismiss (filed April 22, 1997) Is GRANTED.

3. Defendant C. Jean Stewart's Motion to Dismiss (filed June 17, 1997) Is GRANTED.

4. Defendants Colorado National Bank's and David W. Stark's Motion for Injunction Prohibiting Joseph Vento

from Filing Additional Complaints Against David W. Stark, Colorado National Bank, or Any of Their Agents or Attorneys Without Leave of Court (filed April 22, 1997) Is DENIED.

5. Defendant C. Jean Stewart's Motion to Stay Discovery (filed June 17, 1997) Is DENIED as moot.

6. Defendants Colorado National Bank's and David W. Stark's Motion for Sanctions under Fed. R. Civ. P. 11 (filed April 29, 1997) Is GRANTED. This matter Is hereby referred back to the Magistrate Judge for determination of the amount of reasonable attorney fees and expenses to be awarded.

7. Defendant Jack M. Merritts' request for costs, including reasonable attorney fees pursuant to 42 U.S.C. § 1988 (made April 1, 1997) Is GRANTED. This matter Is hereby referred back to the Magistrate Judge for determination of the amount of reasonable attorney fees and expenses to be awarded.

8. Defendant Stewart's request for costs and attorney fees (made June 17, 1997) Is DENIED.

9. Plaintiff Vento's request for attorney fees for responding to the Motion for Injunction (made May 21, 1997) is DENIED.

10. This civil action is dismissed with prejudice.

DATED at Denver, Colorado, this 4th day of June, 1998.

BY THE COURT:

/s/
United States District Judge

APPENDIX B-2

PROBATE COURT CITY AND COUNTY OF DENVER
STATE OF COLORADO

Case No. 95PR2379

ORDER ON INTERPLEADER PETITION

IN THE MATTER OF
COLORADO NATIONAL BANK,
Plaintiff

v.

JOSEPH A. VENTO, LINDA SAUNDERS, Personal Representative of the Estate of Cecilia DeFellippie, IRENE C. COULTER, RICHARD G. VENTO, ANGELINA VENTO, MARIHELEN VENTO, and WESLEY C. KETTELKAMP, JR.
Defendants

On January 3, 1996, this matter came on for hearing on the Plaintiffs Verified Motion for Leave to Deposit Money With Court and for Injunctive Relief Pursuant to Rule 22 C.R.C.P. The Court has heard arguments and statements from counsel, reviewed the pleadings and motion, and is fully advised in the premises.

The Court finds that the requirements of C.R.C.P. 22 have been met in this case, Colorado National Bank ("CNB") being subject, as to payment of a Judgment obtained against it

in Case No. 87 CV 867 in the District Court in Pueblo County (herein "the Judgment"), to conflicting and inconsistent claims which could, if not resolved, result in multiple liability to CNB. The existence of an outstanding letter of credit from CNB creates an urgent situation.

Based on the foregoing, it is hereby ORDERED:

A. The Plaintiff, CNB, is directed to transfer to account # 1013051262 field at Norwest Bank Colorado, N.A., the sum of approximately $4,400,000 which represents the amount of the Judgment against CNB, plus costs awarded and interest accrued thereon as of this date. The precise calculation of the accrued interest and costs is subject to further review by this Court.

B. The above-referenced account is to be held at interest in the name of "The Denver Probate Court f/b/o Vento Beneficiaries" pursuant to the provisions of C.R.S. § 11-10.5-101 *et. seq.*, until further Order of this Court.

C. Upon transfer of the Judgment amount, and subject only to adjustments of the calculation as described above, CNB shall be considered to have satisfied the Judgment referenced above. This satisfaction of judgment cannot be asserted by CNB to hinder or bar, nor shall it be construed by any court, to hinder or bar any other claims against CNB.

D. Pursuant to C.R.C.P. 22 the Defendants, and each of them, are restrained and enjoined from instituting or prosecuting in any court of this state any action against CNB, wherein the Defendants or any of them, in any manner, seek to recover the amount of the Judgment or any part thereof, to execute on the Judgment, to collect on the Letter of Credit posted for the Judgment, to execute on

any asset of CNB, or to recover any damages for failure of CNB to deliver funds to any of the Defendants to satisfy the Judgment.

DATED January 3, 1996.

/s/_____
C. Jean Stewart
Judge Probate Court

APPENDIX C

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment of the Constitution of the United States provides in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Section 9(3) of Article VI of the Colorado Constitution provides as follows:

> (3) In the city and county of Denver, exclusive original jurisdiction in all matters of probate, settlements of estates of deceased persons, appointment of guardians, conservators and administrators, and settlement of their accounts, the adjudication of the mentally ill, and such other jurisdiction as may be provided by law shall be vested in a probate court, created by section 1 of this article, and to which court all of such jurisdiction of the county court of the city and county of Denver shall be transferred, including all pending cases and matters, effective on the second Tuesday of January, 1965.

STATUTES

Title 42 U.S.C. §1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Colorado Revised Statutes 1997 section 5-12-106 provides as follows:

> 5-12-106. Rate of interest on judgments which are appealed. (1) Except as provided in section 13-21-101, C.R.S., where there is no written agreement as to the rate of interest, creditors shall receive interest as follows:
>
> (a) If a judgment for money in a civil case is appealed by a judgment debtor and the judgment is affirmed, interest, as set out in subsections (2) and (3) of this section, shall be payable from the date of entry of judgment in the trial court until satisfaction of the judgment and shall include compounding of interest annually.
>
> (b) If a judgment for money in a civil case is appealed by a judgment debtor and the judgment is modified or reversed with a direction that a judgment for money be entered in the trial court, interest, as set out in subsections (2) and (3) of this section, shall be payable from a date a judgment was first entered in the trial court until the judgment is satisfied and shall include

compounding of interest annually. This interest shall be payable on the amount of the final judgment.

(2)(a) The rate of interest shall be certified on each January 1 by the secretary of state to be two percentage points above the discount rate, which discount rate shall be the rate of interest a commercial bank pays to the federal reserve bank of Kansas City using a government bond or other eligible paper as security, and shall be rounded to the nearest full percent. Such annual rate of interest shall be so established as of December 31, 1982, to become effective January 1, 1983. Thereafter, as of December 31 of each year, the annual rate of interest shall be established in the same manner, to become effective on January 1 of the following year.

(b) Notwithstanding any other provision of this subsection (2), the rate of interest shall be no lower than the percentage authorized in section 5-12-102(4)(b).

(3) The rate at which interest shall accrue during each year shall be the rate which the secretary of state has certified as the annual interest rate under subsection (2) of this section.

Article 9 of Title 13, Colorado Revised Statutes, provides in pertinent part as follows:

Sections 13-9-101 through 13-9-103 of Article 9 of the Colorado Revised Statutes 1997 provide in pertinent part as follows:

13-9-101 Establishment. Pursuant to the provisions of section 1 of article VI of the Colorado Constitution, there is hereby established the probate court of the city and county of Denver.

13-9-102 Court of record – powers. The probate court shall be a court of record with such powers as are inherent in constitutionally created courts and with such legal powers to effectuate its jurisdiction and carry out its orders, judgments, and decrees as are possessed by the district courts.

13-9-103 Jurisdiction. (1): The probate court of the city and county of Denver has original and exclusive jurisdiction in said city and county of:

(a) The administration, settlement, and distribution of decedents, wards, and absentees;

(b) Property vested in any person under a legal disability but paid to or held by another for such person's use or benefit as authorized by a power contained in a will or trust instrument;

(c) Property vested in any minor pursuant to the "Colorado Uniform Transfers to Minors Act", or any predecessor act thereto, or any act having a substantially similar legal effect;

(d) The probate of wills;

(e) The granting of letters testamentary, of administration, of guardianship, and of conservatorship;

(f) The administration of guardian-ships of minors and of mentally competent persons and of conservatorships of mentally ill or mentally deficient persons and of absentees;

(g) Proceedings under article 23 of title 17 and articles 10 to 15 of title 27, C.R.S.;

(h) The determination of heirship in probate proceedings and the devolution of title to property in probate proceedings;

(i) Actions on the official bonds of fiduciaries appointed by it;

(j) The construction of wills;

(k) The administration of testamentary trusts, except as provided in subsection (2) of this section; and

(l) All other probate matters.

(2) If a testamentary trust is established by the will of the decedent and if it appears that it was not the intention of the testator that the court should continue the administration of the estate after the payment in full of all debts and legacies except the trust property, the court shall proceed to final settlement of such estate as in other cases, order the trust fund or property to be turned over to the trustee as such, and shall not require the filing of inventories and accounts, or supervise the administration of the trust; except that any party in interest of such trust, including the trustee thereof, may invoke the jurisdiction of the probate court with respect to any matters pertaining to the administration or distribution of such trust or to construe the will under which it was established.

(3) The court has jurisdiction to determine every legal and equitable question arising in connection with decedents', wards' and absentees' estates, so far as the question concerns any person who is before the court by reason of any asserted right in any of the property of the estate or by reason of any asserted obligation to the estate, including, without limiting the generality of the foregoing, the jurisdiction:

(a) To give full and complete legal and equitable relief in any case in which it is alleged

that the decedent breached an agreement to make or not to make a will;

(b) In any case in which a district court could grant such relief in a separate action brought therein, to impose or raise a trust with respect to any of the property of the decedent or any property in the name of the decedent, individually or in any other capacity, in any case in which the demand for such relief arises in connection with the administration of the estate of a decedent;

(c) To partition any of the real or personal property of any estate in connection with the settlement thereof.

(4) Nothing in this article shall prevent any district court sitting in law or equity from construing a will which is not before the probate court or from determining questions arising in connection with trusts which are not under the jurisdiction of the probate court.

(5) The court has jurisdiction to determine every legal and equitable question arising out of or in connection with express trusts.

(6) The provisions of articles 10 to 20 of title 15, article 23 of title 17, and articles 10 to 15 of title 27, C.R.S., shall govern the issuance and service and proof of service of any process, notice, citation, writ, or order of court and shall govern all other proceedings had pursuant to the powers of the court recited in subsections (1) and (2) of this section. The Colorado rules of civil procedure shall govern such matters when the proceedings are had pursuant to the powers granted to the court under any of the other provisions of this section.

(7) With respect to any trust established by or for an individual with his or her assets, income, or property of any kind, notwithstanding any statutory provision to the contrary, the court shall not authorize, direct, or ratify any trust that either has the effect of qualifying or purports to qualify the trust beneficiary for federal supplemental security income, or public or medical assistance pursuant to title 26, C.R.S., unless the trust meets the criteria set forth in sections 15-14-409.6 to 15-14-409.9, C.R.S., and any rule adopted by the medical services board pursuant to section 26-4-506.6, C.R.S.

RULES

Rule 8(e)(2) of the Federal Rules of Civil Procedure provides as follows:

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

Rule 22, Interpleader, of the Colorado Rules of Civil Procedure provides as follows:

(1) Persons having claims against the plaintiff may be joined as defendants and required

to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross claim or counterclaim. The provisions of this Rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(2) In any civil action of interpleader, a district court may enter its order restraining all claimants from instituting or prosecuting any proceeding in any court of this state affecting the property, instrument, or obligation involved in the interpleader action until further order of the court. Such district court shall hear and determine the case, and may discharge the plaintiff from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment.

APPENDIX D-1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 97-S-463

JOSEPH A. VENTO,

Plaintiff,

v.

COLORADO NATIONAL BANK, C. JEAN STEWART, DAVID W. STARK and JACK M. MERRITTS,

Defendants.

COMPLAINT

COUNT I

1. This is an action to redress the deprivation by the defendants of the rights of the plaintiff Joseph A. Vento secured by the Constitution and the laws of the United States and the State of Colorado.

2. Jurisdiction of the Court is invoked under the provisions of sections 1983 and 1988 of Title 42 of the United States Code.

3. During all times mentioned in this Complaint, the plaintiff was, and he still is, an adult citizen of the United States residing in Pueblo, Colorado, and is an attorney registered with the Supreme Court of Colorado under number 637.

4. During all times mentioned in this Complaint, the defendant C. Jean Stewart was, and still is, the duly appointed Probate Judge in the City and County of Denver, Colorado, and was acting in her official capacity. She is sued, however, only in her individual capacity.

5. During all times mentioned in this Complaint, the defendant Colorado National Bank (CNB) was, and still is, a national banking association having its principal place of business in the State of Colorado.

6. During all times mentioned in this Complaint, the defendant David W. Stark was, and still is, a citizen of the United States residing in Denver, Colorado.

7. During all times mentioned in this Complaint, the defendant Jack M. Merritts was, and still is, a citizen of the United States residing in Denver, Colorado.

8. During all times mentioned in this Complaint, the Defendants were acting under color of law, that is, under color of the Constitution, statutes, laws, charter, ordinances, rules, regulations, customs and usages of the State of Colorado and the City and County of Denver, Colorado.

9. Colorado National Bank (CNB) as plaintiff filed a Complaint For Interpleader and Injunctive Relief in the Probate Court In and For the City and County of Denver, Colorado, on December 29, 1995, Case No. 95 PR 2379. The matter was set for hearing on January 3, 1996, at 10:30 a.m. On that same day, that is, January 3, 1996, after a hearing that lasted a little over an hour, the defendant, the Honorable C. Jean Stewart of the Denver Probate Court entered an Order on Interpleader Petition, Exhibit A attached, which included a temporary or preliminary injunction

enjoining the plaintiff Joseph A. Vento from doing the things set forth in Paragraph D of the Order on Interpleader Petition, as follows:

> D. Pursuant to C.R.C.P. 22 the Defendants, and each of them, are restrained and enjoined from instituting or prosecuting in any court of this state any action against CNB, wherein the Defendants or any of them, in any manner, seek to recover the amount of the Judgment or any part thereof, to execute on the Judgment, to collect on the Letter of Credit posted for the Judgment, to execute on any asset of CNB, or to recover any damages for failure of CNB to deliver funds to any of the Defendants to satisfy the Judgment.

10. The Complaint for Interpleader and Injunctive Relief in Case No. 95 PR 2379 and the notice of the hearing with respect to a Verified Motion For Leave To Deposit Money With Court and For Injunctive Relief to be held in the Denver Probate Court on January 3, 1996, at 10:30 a.m. was given by serving the plaintiff Joseph A. Vento with process and notice of the hearing on January 3, 1996, at his home in Pueblo, Colorado, at 7:45 a.m., which is more than 100 miles from Denver, Colorado.

11. Along with the Complaint in Case No. 95 PR 2379, there was also served on the plaintiff Joseph A. Vento, on that same morning of January 3, 1996, at 7:45 a.m., a Summons. Among other provisions in the Summons were the following words:

> You are hereby summoned and required to file with the Clerk of the Court an answer or other response to the attached Complaint for Interpleader and Injunctive Relief. If service of the summons and complaint was made upon you within the State of Colorado, you are required to file your answer or other response within 20 days after such service upon you...

Only a few hours were given for the plaintiff Joseph A. Vento to appear in the Denver Probate Court at 10:30 a.m. on January 3, 1996, and 20 days were not given to him to file an answer or other response to the Complaint. Interpleader was wrongfully ordered before the plaintiff Joseph A. Vento could file an answer setting forth any defenses he may have had to the interpleader action or otherwise contest the interpleader complaint. See Transcript of Hearing of January 3, 1996, in Case No. 95 PR 2379, attached as Exhibit B ("Transcript").

12. At about 9:15 a.m. on January 3, 1996, the plaintiff Joseph G. Vento called the law firm of Dufford & Brown, P.C., in Denver, Colorado, and asked them to appear specially at the 10:30 a.m. hearing on that same date, January 3, 1996, on his behalf. Upon appearing for the plaintiff Joseph A. Vento at that hearing on January 3, 1996, the law firm of Dufford & Brown, P.C., through Phillip D. Barber, Esq., requested a continuance but the request was denied. (See lines 21-24 on page 8 of Exhibit B.) Also, at that hearing Phillip D. Barber filed a motion for a change of venue to Pueblo, Colorado, which either then or later was denied. After a brief hearing with only some discussion and argument but no testimony, the Denver Probate Court forthwith entered its Order on Interpleader Petition (Exhibit A). The law firm of Dufford & Brown, P.C. no longer represents the plaintiff Joseph A. Vento in Case No. 95 PR 2379 having withdrawn from that representation on or about May 15, 1996, because of an alleged conflict of interest. Two lawyers, Phillip D. Barber of Dufford and Brown, P.C., who at the time represented the plaintiff, Joseph A. Vento, and John A Purvis of Purvis, Gray, Schvetze & Gordon, who was the attorney for a defendant in Action No. 95 PR 2379, W.C. Kettelkamp, Jr., thereafter filed affidavits with respect to that hearing, which affidavits are attached hereto as Exhibits C and D.

13. In that Order on Interpleader Petition (Exhibit A), the Denver Probate Court purported to satisfy the Judgment obtained against CNB in Case No. 87 CV 867 in the District

Court in Pueblo County without any payments being made to the judgment creditors, and before the Mandate issued out of the Colorado Court of Appeals on January 5, 1996, affirming the judgment granted in Case No. 87 CV 867 in Pueblo County District Court.

14. On the afternoon of January 3, 1996, the plaintiff Joseph A. Vento faxed to his counsel a copy of the Denver Probate Court's December 15, 1995, Disclosure Notice and Order (see attached Exhibit E) that was issued in case No. 95 PR 2301 in the Probate Court, City and County of Denver, Colorado. In that Disclosure Notice the defendant, C. Jean Stewart, stated that she had represented Colorado National Bank (CNB) as a fiduciary in an unrelated matter. The plaintiff Joseph A. Vento, through his counsel, Moved to Disqualify Or, Alternately, For Recusal. On January 16, 1996, The Honorable C. Jean Stewart signed a Recusal Order without vacating her previous Order on Interpleader Petition, thus leaving that Order to stand.

15. On December 21, 1995, the defendant Jack M. Merritts wrote a letter to CNB demanding that CNB immediately take all appropriate action including, but not limited to, to seek an order of appropriate court to deposit the funds that would otherwise be paid the plaintiff Joseph A. Vento in an interest bearing account with a national bank in Denver not affiliated with the Colorado National Bank. See Exhibit F attached.

16. On January 2, 1996, the defendant Jack M. Merritts faxed and then mailed to the attorneys for CNB and others A Response To Plaintiff's Verified Motion For Leave To Deposit Money With Court And For Injunctive Relief By Defendants Irene C. Coulter, Richard G. Vento, Angelina Vento and Marihelen Vento in which he sought some changes in the Bank's Verified Motion For Leave To Deposit Money With the Court and For Injunctive Relief Pursuant To Rule 22 C.R.C.P., and after making such changes requested the Court to enter an order accepting the deposit of funds described in

the Bank's Motion into the Registry of the Court. See attached Exhibit G.

17. On January 3, 1996, Jack M. Merritts stated to the Denver Probate Court that, "Your Honor, as we have said before, we do support the bank's motion that there should be a deposit of funds, and we do believe it should be in this Court." He also participated in the proceedings on January 3, 1996, in the manner of seeking an immediate decree or order of interpleader. See lines 20-23 on page 28 of Exhibit B. He also stated as shown on lines 6 through 13 on page 6 of Exhibit B that he filed documents in the Court on January 2, 1996.

18. On January 2, 1996, the then counsel for the plaintiff Joseph A. Vento, Dufford & Brown, P.C., faxed a letter to defendant Jack M. Merritts warning him and his clients not to interfere with the Bank's payment of the judgment in the 1987 Action. See attached Exhibit H.

19. The defendant David W. Stark, on December 29, 1996, signed the Complaint For Interpleader and Injunctive Relief and also the Verified Motion for Leave To Deposit Money With the Court and for Injunctive Relief on behalf of CNB pursuant to Rule 22 C.R.C.P. in Case No. 95 PR 2379. He also prepared a proposed order which he tendered or gave to attorneys representing other parties on January 2, 1996, and then tendered the said proposed order to the Denver Probate Court on January 3, 1996. He presented the case on behalf of CNB to the Denver Probate Court and sought and got an immediate decree or order in interpleader.

20. The defendant David W. Stark made the following statements at the hearing on January 3, 1996, in the Denver Probate Court:

> And of course we are concerned that if the mandate issues from the Colorado Court of Appeals, that then someone could try to call that letter of credit. We would have competing claims by Mr. Merritt's clients and by Mr. Powers, by

Mr. Littlepage. And that's why we need the order that we are seeking here. And that order would be to enjoin and restrain all those parties from attempting to collect on that judgment or enforce the letter of credit or call the letter of credit. And that's why we are here today. That's why we -- we view this as an emergency matter that must be decided quickly, because any day now I expect that mandate may issue. And if the mandate issues I fully expect Mr. Barber and Mr. Purvis and their clients to exercise whatever rights they may have with regard to that letter of credit and try to call it. And then I think all the parties in this case are in a much bigger mess than they are right now. (lines 3-22 on page 35 of Exhibit B)

The concern that I had quite frankly in drafting this (the proposed order) is that we need the satisfaction of judgment, and we need to make sure that the interest doesn't continue to accrue once the money is paid. (lines 10-13 on page 47 of Exhibit B)

21. The actions of the defendants through the Denver Probate Court on and before January 3, 1996, and thereafter violated the rights of the plaintiff Joseph A. Vento under the Fourteenth Amendment to the United States Constitution and Title 42 U.S.C. §1983 in that:

(a) Joseph A. Vento was not given a hearing that gave him the right to interpose reasonable and legitimate defenses to the Order on Interpleader Petition on January 3, 1996.

(b) Joseph A. Vento was not treated fairly and there was not fundamental fairness with respect to the hearing on January 3, 1996, and thereafter.

(c) Joseph A. Vento was not given his day in court.

(d) Joseph A. Vento was unfairly denied his motion for continuance on January 3, 1996. A fair tribunal is a basic and core requirement of the process.

(e) Joseph A. Vento was not apprised of the action against him by notice that comports with the requirements of due process and afforded the opportunity to be heard at a meaningful time and in a meaningful manner.

22. All judicial action, orders and acts of the defendant Probate Judge C. Jean Stewart on January 3, 1996, and any acting Probate Judge thereafter in the Denver Probate Court in Case No. 95 PR 2379 were void because of the complete absence of subject matter jurisdiction and lack of person jurisdiction of some of the defendants as follows:

(a) The jurisdiction of the Denver Probate Court stems from Article VI, Section 9(3) of the Colorado Constitution and Colorado Revised Statutes (C.R.S.) §13-9-103(3). These provisions vest the Denver Probate Court with subject matter jurisdiction to determine legal and equitable questions in connection with estates, probate matters, wills and trusts only. The Denver Probate Court is a court of limited jurisdiction and does not have subject matter jurisdiction over the interpleader action filed by CNB under Colorado Rules of Civil Procedure (C.R.C.P.) 22 in Case No. 95 PR 2379.

(b) The Denver Probate Court lacked subject matter jurisdiction to issue the preliminary injunction on January 3, 1996, set forth as Paragraph D in the Order on Interpleader Petition (Exhibit A) by not ordering CNB to give security as required by C.R.C.P. 65(c) and CNB not giving proper notice as required by C.R.C.P. 65(A)(1).

(c) The Denver Probate Court does not have power to exercise jurisdiction over an interpleader action under C.R.C.P. 22. C.R.C.P. 22(2) provides as follows:

> (2) In any civil action of interpleader, a district court may enter its order restraining all claimants from instituting or prosecuting any proceeding in any court of this state affecting the property, instrument, or obligation involved in the interpleader action until further order of the court. (emphasis added)
>
> Such district court shall hear and determine the case, and may discharge the plaintiff from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment. (emphasis added)

Only a district court may enter its order ... and ... Such district court shall hear and determine the case (emphasis added).

(d) The interpleader proceedings were not conducted in accordance with the Colorado Rules of Civil Procedure and were manifestly improper and in violation of due process of law. A decree cannot be entered in an interpleader action until all of the defendants have had an opportunity to answer or contest the interpleader complaint. Neither plaintiff Joseph A. Vento nor the other defendants were given time to file an answer to the Complaint and through his attorney the plaintiff Joseph A. Vento was abruptly denied a continuance (lines 2 through 25 on page 8 and line 1 of page 9 of Exhibit B). The Denver Probate Court issued an Order in Case No. 95 PR 2379 within a matter of hours after service of process was made (and without service of process in some cases).

(e) Lack of personal service over some of the defendants is set forth in Exhibit B as follows:

(1) "With regard to Mr. Kettelkamp (the defendant Wesley C. Kettelkamp) Mr. Kettelkamp has not been served (lines 23-24 on page 9) .... "Obviously he will need to be served in this action or be required to accept service (lines 4-5 on page 10).

(2) THE COURT: ... And I realize I don't have jurisdiction over Mr. Littlepage, but I am relying on a representation to be made to me this morning that he will bring that action here and consolidate it with this case. (lines 10-14 on page 38 of Exhibit B)

23. The defendants, David W. Stark and Jack M. Merritts and CNB through its attorneys and agents, jointly engaged with the defendant, C. Jean Stewart the Probate Judge, in the following acts prohibited under 42 USC §1983, by instigating and initiating an interpleader proceedings in the Probate Court of the City and County of Denver, Colorado, resulting in the defendant C. Jean Stewart issuing an Order on Interpleader Petition on January 3, 1996, which Order satisfied a judgment granted to Joseph A. Vento by the District Court of Pueblo County, Colorado, without paying him any money, causing him to be deprived of his property and interest in property, that is, his right to execute and collect on the judgement granted to him by the Pueblo County District Court, and his right to one-half of the judgment of Cecelia DeFellippie, all without appropriate process. All this property and rights to property are secured to the plaintiff Joseph A. Vento by the provisions of Colorado law with respect to judgments and the enforcement thereof, and are protectable property interests created by the law of the State of Colorado.

24. The defendant C. Jean Stewart as the Probate Judge collaborated with, participated with and acted together with the remaining defendants in having the Denver Probate Court issue an Order on Interpleader Petition (Exhibit A) on January 3, 1996, and producing a constitutional wrong to the plaintiff Joseph A. Vento by depriving him of his property and right to property without appropriate process. The Fourteenth Amendment to the Constitution of the United States prohibits state actions such as done here by the Denver Probate Court which deprive "any person of ... property without due process of law."

25. Some inferences, circumstances and facts indicating that the Court had already agreed to with respect to acting together with the remaining defendants and conspiring with them are as follows:

(a) THE COURT: Okay. Well, your motion (for continuance) will be denied. (lines 25 on page 8 and 1 on page 9 of Exhibit B)

(b) THE COURT: Mr. Stark, I don't think there is any question that the bank is entitled to the relief you have asked for. (lines 18-21 on page 15 of Exhibit B)

(c) THE COURT: I can't imagine any attorney in this room would argue that the bank isn't in a tough spot here and needs some guidance in who gets the funds and how to distribute it. (lines 24-25 on page 15 and 1-2 on page 16 of Exhibit B)

(d) THE COURT: ... I understand that you feel that the interpleader is not an appropriate remedy, and I don't agree with you on that. (line 25 on page 37 and 1-2 on page 38 of Exhibit B) ... I am going to grant the bank's motion for the deposit of the funds here in this court. (lines 9-10 on page 38 of Exhibit B)

(e) THE COURT: Okay. All right. Well, I made a preliminary contact a few moments before I came on the bench with Norwest Bank Colorado inquiring whether or not -- I know this has been painful for one bank to hear. But in keeping with the request of some of the parties, I realized that Colorado National Bank was not an option. So I made an inquiry, and they are willing to take this deposit this afternoon. Are you in a position to make this? (lines 3 to 11 on page 53 of Exhibit B)

(f) THE COURT: Okay. All right. What will happen then, I will issue this order this afternoon. (lines 20-21 on page 53 of Exhibit B)

(g) THE COURT: ... Okay. The account number will be 101 ____. I didn't ask for this account in

advance of the argument. I want you to know that I really had absolutely no idea how this was going to come out. But the bank was anxious to accommodate me when I made the inquiry, so they provided this number in case you needed it, 1013051262. And the contact persons are Ann Thacker, T-H-A-C-K-E-R, who is a vice president at the bank, whose direct line is 863-4542. She has an assistant whose name is Barbara McCoin, M-c-C-O-I-N, and her number is 863-5052. And it's called Norwest Bank Colorado, National Association, or abbreviation N.A. Okay. And in the order, I will include instructions that the Norwest Bank fund is not to be disbursed without -- in whole or in part -- without further order of this Court. (lines 12 to 25 on page 54 and line 1 on page 55 of Exhibit B)

26. As a result of the acts and conduct of the defendants acting through the Denver Probate Court, Joseph A. Vento was deprived of his property which included the right to execute and collect on the judgment granted to him by the District Court of Pueblo County, Colorado, on June 15, 1993, which judgment was affirmed by the Colorado Court of Appeals and certiorari with respect to reviewing same denied by the Colorado Supreme Court.

COUNT II

The plaintiff Joseph A. Vento realleges and incorporates herein by reference paragraphs 1 through 26 above..

27. The official acts of the defendant Probate Judge C. Jean Stewart, in issuing the Interpleader Order on Petition on January 3, 1996, was a product of a conspiracy with the defendants David W. Stark, CNB acting through its agents and attorneys, and Jack M. Merritts conspiring with and acting in concert with the defendant Probate Judge C. Jean Stewart which constituted a wrong to the plaintiff Joseph A. Vento by depriving him of his property and rights to property without appropriate process, that is, the right to execute and

collect on the judgment granted him by the District Court of Pueblo County on June 15, 1993.

28. There was an agreement either express or implied between the defendant Probate Judge C. Jean Stewart and the remaining defendants by which they acted in concert to violate plaintiff Joseph A. Vento's rights resulting in the deprivation of his property without due process of law.

29. Among the other wrongful goals of the conspiracy, there was the matter of (1) interpleading through the Denver Probate Court, a court of limited jurisdiction, a judgment of the Pueblo County District Court, (2) having the Denver Probate Court satisfy a judgment of the Pueblo County District Court, and (3) purporting to satisfy a judgment without paying the judgment creditors.

30. The defendants by their acts pieced together a basis for an interpleader suit, each of the defendants performed their respective parts toward attainment of the interpleader action and completed the interpleader procedure without due process with the view of depriving by the defendants of Joseph A. Vento of his property, i.e., the right to execute and collect on his judgment.

COUNT III

The plaintiff Joseph A. Vento realleges and incorporates herein by reference paragraph 1 through 30 above.

31. The defendants engaged in one or more of the following in violation of the plaintiff Joseph A. Vento's rights as set forth herein: (1) willful or malicious violation of his constitutional rights, or (2) intentional acts by the defendants in gross regard of the rights of the plaintiff, or (3) reckless disregard by the defendants that they were violating the rights of the plaintiff.

32. As a direct and proximate result of the acts and omissions of the defendants herein described, the plaintiff

Joseph A. Vento incurred, suffered and should be made whole for the following damage and loss:

(1) The amount of his judgment granted him by the Pueblo County District Court on June 15, 1993, as amended for prejudgment interest plus 8% compound interest per annum from June 15, 1993, to date and continuing. On January 3, 1996, this amounted to approximately $2,200,000. (See Exhibit A).

(2) Interest including prejudgment interest.

(3) One-half of the judgment of Cecelia DeFellippie. This amounted to approximately $1,100,000 on January 3, 1996.

(4) The money spent to retain the services of an attorney, and

(5) Attorney fees for representing himself.

WHEREFORE, the plaintiff Joseph A. Vento claims judgment against the defendants and each of them, jointly and severally as follows:

A. Compensatory damages in an amount this Court shall consider to be just, reasonable and fair;

B. Punitive damages in an amount this Court shall consider to be just, reasonable and fair;

C. Attorney's fees and the costs of this action;

D. Interest, including prejudgment interest; and

E. Such other relief as this Court shall consider to be fair and equitable.

JURY DEMAND

Plaintiff demands a trial by jury in this action.

THE PLAINTIFF

By:
/s/
Joseph A. Vento, #637
Pro se
102 South Tejon, Suite 1100
Colorado Springs, CO 80903
(719) 578-3329

Address of Plaintiff Joseph A. Vento

3109 Country Club Drive
Pueblo, Colorado 81008

APPENDIX D-2

PROBATE COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO

Case No. 95PR2379

COMPLAINT FOR INTERPLEADER AND INJUNCTIVE RELIEF

COLORADO NATIONAL BANK,
Plaintiff,

v.

JOSEPH A. VENTO, LINDA SAUNDERS, Personal Representative of the Estate of Cecilia DeFellippie, IRENE C. COULTER, RICHARD G. VENTO, ANGELINA VENTO, MARIHELEN VENTO, and WESLEY C. KETTELKAMP, JR.,
Defendants.

The Plaintiff, Colorado National Bank ("CNB"), by and through its attorneys, Otten, Johnson, Robinson, Neff & Ragonetti, P.C., pursuant to Rule 22 C.R.C.P., for its claim in interpleader and for injunctive relief states as follows:

1. CNB is a party to an action entitled Joseph A. Vento and Cecilia DeFellippie v. Colorado National Bank-Pueblo, Case No. 87 CV 867, pending in Pueblo District Court (the "1987 Action"). The Plaintiffs in the 1987 Action

each obtained a judgment against CNB in the amount of $931,962.50 on or about June 23, 1993 (the "Judgments"). The trail court also awarded costs and interest at 8% from March 22, 1985.

2. CNB is also a party to an action entitled In the Matter of the Joseph A. Vento Trust and Related Vento Family Trusts, Case No. 95 PR 2301, pending in the Probate Court in and for the City and County of Denver, State of Colorado (the "Resignation Action"). In the Resignation Action, CNB has filed a Petition asking the Court to confirm its resignation as trustee of the Joseph A. Vento Trust, Cecelia DeFellippie Trust, Irene C. Coulter Trust, Dominic A. Vento Trust and various trusts for the benefit of the children of Joseph A. Vento.

3. Defendant Joseph A. Vento is a beneficiary of the Joseph A. Vento trust and was a plaintiff in the 1987 Action.

4. Defendant Linda Saunders ("Saunders") is the personal representative of the estate of Cecilia DeFellippie. Cecilia DeFellippie was a plaintiff in the 1987 Action and the beneficiary of the Cecilia DeFellippie trust. Cecilia DeFellippie died on or about December 1, 1995.

5. Defendant Irene C. Coulter is the beneficiary of the Irene C. Coulter trust.

6. Defendants Richard G. Vento, Angelina Vento and Marihelen Vento are beneficiaries of the Dominic A. Vento trust.

7. Defendants Irene C. Coulter, Richard G. Vento, Angelina Vento and Marihelen Vento were not parties to the 1987 Action, However, they filed suit in June of 1994 in Denver District Court against the Colorado National Bank alleging claims relating to the 1987 Action.

8. Defendant Wesley C. Kettelkamp, Jr. is an attorney licensed to practice law in Colorado. Mr. Kettelkamp was attorney for Joseph A. Vento and Cecilia DeFellippie In

the 1987 Action. Upon information and belief, Mr. Kettelkamp has a claim to some portion of the Judgments.

9. CNB appealed the Judgments and posted a supersedeas bond in the form of a letter of credit dated October 4, 1993, in favor of the District Court, Pueblo County, Colorado in the amount of $4,000,000.00 (the "Letter of Credit").

10. The appeals of CNB proved unsuccessful and the Colorado Supreme Court denied CNB's Petition for a Writ of Certiorari on or about December 11, 1995.

11. The amount of the Judgments resulting from the 1987 Action, including pre- and post-judgment interest, is now approximately $4,347,307.48.

12. A dispute has arisen among all Defendants concerning the division of the proceeds of the Judgments payable to the Plaintiffs in the 1987 Action.

13. On or about December 22, 1995, Saunders filed an action entitled Linda Saunders, as Personal Representative for the Estate of Cecilia DeFellippie v. Joseph A. Vento and Wesley C. Kettelkamp, Jr., in the District Court, Pueblo County, Colorado in which Saunders alleges that a dispute exists regarding a division of the proceeds of the Judgments payable to the plaintiffs in the 1987 Action. A copy of Saunders' Verified Motion for Preliminary Injunction is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

14. Defendants Irene C. Coulter, Richard G. Vento, Angelina Vento and Marihelen Vento have advised CNB that they also claim an interest in the proceeds of the Judgments. A copy of a letter dated December 21, 1995 from Jack M. Merritts, attorney for Defendants Irene C. Coulter, Richard G. Vento, Angelina Vento and Marihelen Vento, demanding that CNB take all appropriate action to secure a court-supervised escrow for the proceeds of the Judgment in favor of Joseph

A. Vento is attached hereto as Exhibit B and incorporated by reference as if fully set forth herein.

15. As described in Exhibits A and B, CNB may be exposed to claims by some or all of the Defendants if the Defendants are not required to interplead in this action and if CNB is not allowed to deposit the proceeds of the Judgments with this Court in an interest-bearing account.

16. CNB neither has, nor claims, any interest in the Judgments and is willing to pay the amount of the Judgments to such person or persons as should be lawfully entitled to receive it and to whom CNB could safely and without hazard to itself pay the same. CNB offers to bring the total amount necessary to satisfy the Judgments into the Court at such time and under such conditions as the Court may order and direct.

17. CNB is not in collusion with any Defendant or any other party making claim to the funds and has not brought this Complaint in Interpleader at the request of any party, but has filed it upon the advice of its counsel and of its own free will, in order to avoid being harassed and being subjected to double costs and double liability and to avoid unnecessary lawsuits.

18. Rule 22(2) C.R.C.P. provides that "[i]n any civil action of interpleader, a district court may enter its order restraining all claimants from instituting or prosecuting any proceeding in any court of this state affecting the property, instrument or obligation involved in the interpleader action until further order of court." It is necessary that this Court enter an order restraining and enjoining the Defendants and each of them from commencing in any court any action against CNB, where the Defendants or any of them, in any manner, seek to recover the amount of the Judgments, or any part of that sum, to execute on the Judgments, to collect on the Letter of Credit posted for the Judgments, to execute on any asset of CNB, or to recover any damages for failure of CNB to deliver funds to any of the Defendants to satisfy the Judgments.

19. This action for interpleader is CNB's only means of protecting itself from litigation in which it has no interest.

WHEREFORE, the Plaintiff prays for relief as follows:

A. This Court enter an order requiring the Defendants to interplead in this cause and to settle their respective rights to the Judgments;

B. This Court enter an order authorizing and directing the Plaintiff, the Colorado National Bank, to pay into the registry of the Court the amount of the Judgments in the 1987 Action, plus costs awarded and interest, as full satisfaction for the Judgments in the 1987 Action;

C. This Court enter an order authorizing and directing the Clerk of this Court to invest the proceeds of the Judgments in an interest-bearing account;

D. This Court enter an order restraining and enjoining the Defendants and each of them from commencing in any court of this state any action against CNB, where the Defendants or any of them, in any manner, seek to recover the amount of the Judgments, or any part of that sum, to execute on the Judgments, to collect on the Letter of Credit posted for the Judgments, to execute on any asset of CNB, or to recover any damages for failure of CNB to deliver funds to any of the Defendants to satisfy the Judgments;

E. This Court enter in order awarding judgment in favor of the Plaintiff, CNB, and forever releasing and discharging CNB from any and all liability to the Defendants with respect to all matters relating to the Judgments in the 1987 Action;

F. This Court enter a satisfaction of judgment in favor of CNB on the Judgments and the 1987 Action;

G. This Court award CNB its costs and attorneys' fees incurred in this action; and

H. The Court grant such other, further and different relief as it deems just and proper.

DATED December 29, 1995.

Respectfully submitted,

OTTEN, JOHNSON, ROBINSON,
NEFF & RAGONETTI, P.C.

By /s/_____
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